

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

LAVERN BERRYHILL,

Plaintiff,

v.

BRAD HENRY, et al.,

Defendants,

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No. CIV 10-091-FHS-SPS

OPINION AND ORDER

Plaintiff has filed a motion requesting reconsideration of his denied motion for leave to proceed *in forma pauperis* [Docket #12]. As set forth in the court's previous order, plaintiff has accumulated at least three prior civil rights actions that count as "strikes" under 28 U.S.C. § 1915(g) [Docket #11]. He alleges in his motion to reconsider that his 1990 criminal trial, appeal, and federal habeas corpus hearing were "mock, Ku Klux Klan proceedings," in violation of the U.S. Constitution. He also claims he was beaten and deprived of food, water, and medication. He accuses this court of applying a racist standard to him that denies him due process, when he lacks funds to pay the filing fee.

After careful review, the court finds the issue still is whether plaintiff is eligible to proceed *in forma pauperis* under the applicable statute. For the same reasons set forth in the court's order of April 12, 2010, the court again finds he has had too many prior frivolous cases, and he has not shown he is under imminent danger of serious physical harm. 28 U.S.C. § 1915(g).

Plaintiff argues in his amended motion to reconsider denial of *in forma pauperis* status [Docket #13] and in his motion to show cause why *[in] forma pauperis* cannot be denied

[Docket #15] that 28 U.S.C. § 1915 does not apply to his case, because his conviction is invalid, and he has been kidnaped and held hostage for more than 20 years. Plaintiff's complaint concerns an alleged conspiracy to obstruct justice and kidnap him because of the defendants' racial hatred. The complaint names 96 defendants and asks for relief in the form of a declaratory judgment that his rights have been violated, criminal prosecution of the defendants, compensatory damages of \$125,000,000 from each defendant, and punitive damages of \$375,000,000 from each defendant [Docket #1 at 17]. Plaintiff has filed a civil rights complaint, and the "three strikes" rule applies to his motion for leave to proceed *in forma pauperis*.

Finally, plaintiff also has filed a motion asking the district court judge to recuse [Docket #17]. The motion concerns the legality of plaintiff's conviction and incarceration, and the only allegations concerning the district judge are as follows:

. . . [Y]our focus in this case has been solely to sabotage the case to protect your friends/associates and to conspire with the defendants to murder me and to prevent a federal investigation into my kidnap hostage situation and to intentionally abuse your judicial discretion to protect your friends & to obstruct justice, in this Art. III case, in excess of \$50 Billion, in direct violation of my U.S. Const. VII Amend. right to prove my claims against the defendants in a jury trial

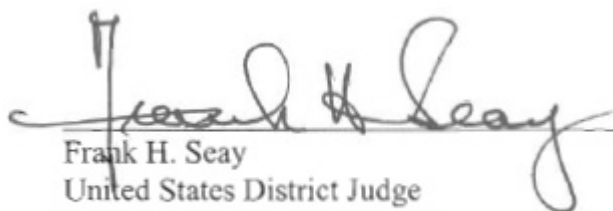
[Docket #17 at 4].

Plaintiff has not pointed to any act or speech by the district judge indicating bias, prejudice, or the appearance of impropriety. *See Mitchell v. Maynard*, 80 F.3d 1433, 1450 (10th Cir. 1996) (noting even appearance of impropriety must be avoided). Instead, he raises completely unsubstantiated and conclusory allegations with no factual basis. Therefore, his motion for the district judge to recuse also is denied.

ACCORDINGLY, plaintiff's motions to reconsider the denial of leave to proceed *in*

forma pauperis [Docket #12 and #13], to show cause why [*in*] *forma pauperis* cannot be denied [Docket #15], and for the district judge to recuse [Docket #17] are DENIED. Plaintiff is directed to forward the \$350.00 filing fee to the Court Clerk within fifteen (15) days. The agency having custody of plaintiff is ordered to release funds from plaintiff's accounts, including plaintiff's trust account, for payment of the filing fee. Failure to comply with this order will result in dismissal of this action.

IT IS SO ORDERED this 5th day of May, 2010.



Frank H. Seay
United States District Judge
Eastern District of Oklahoma